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8 **Attorneys for Plaintiffs,**  
9 **DANIEL KEATING-TRAYNOR on behalf of himself**  
10 **and all others similarly situated**

11 **UNITED STATES DISTRICT COURT**  
12 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

13 **DANIEL KEATING-TRAYNOR on**  
14 **behalf of himself and all others similarly**  
15 **situated,**

16 **Plaintiff,**

17 **vs.**

18 **AC SQUARE, COMCAST INC.;**  
19 **AFSHIN GHANEH; ANDREW**  
20 **BAHMANYAR; and DOES 1**  
21 **THROUGH 60, inclusive,**

22 **Defendants.**

23 **CASE NO: 08-2907MHP**

24 **PLAINTIFF'S OPPOSITION TO**  
25 **MOTION TO DISMISS COMPLAINT**  
26 **FOR DAMAGES FOR VIOLATION OF**  
27 **FAIR LABOR STANDARDS ACT**

28 **CLASS ACTION 29 USC 216(b)**

**Date: August 25, 2008**

**Time: 2:00 p.m.**

**Honorable Marilyn Hall Patel**

29 **PLAINTIFF HAS FILED AN AMENDED COMPLAINT MAKING MOOT THIS**  
30 **MOTION**

31 Plaintiff has been attempting to obtain Defendants' agreement to merge the complaint in  
32 this action with the complaint in the related removed action being Case No. 08-3035 MHP. This  
33 makes sense from a standpoint of judicial economy because this complaint was filed only one  
34 day after the complaint in Case No. 08-3035 and both contain the FLSA causes of action against  
35 the same individuals and entities. As to both of these two complaints, Defendants could then  
36 make one motion to dismiss and save time and expense for all concerned. To date, defendants

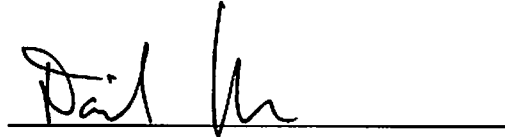
have declined to consent.

1           Plaintiff files this opposition solely as a protective device since he has filed a First  
2           Amended Complaint in this action. The First Amended Complaint moots the Motion to Dismiss  
3           already filed in this action. The First Amended Complaint notes more specifically that Plaintiff in  
4           fact worked over 40 hours in a work week without being paid overtime, and that class members,  
5           most or all, worked over 40 hours a week in one or more work weeks without being paid  
6           overtime. The First Amended Complaint also gives additional allegations as to how the  
7           individual defendants benefitted personally from the scheme to deprive Plaintiff and the class of  
8           their lawful wages. The First Amended Complaint also shows that the conspiracy included overt  
9           acts occurring less than three years before the complaint in this action was filed. The First  
10          Amended Complaint also shows that any statute of limitations claim is equitably tolled by  
11          Defendants knowledge of the allegations that form the core of this action, and Plaintiff's intend  
12          to bring legal action as a result, as early as July 7, 2006. The First Amended Complaint also  
13          shows that its claims relate back at least to June 29, 2007 (when the lawsuit was filed in San  
14          Mateo Superior Court as a class action) and in fact to the lawsuit filed in San Mateo Superior  
15          Court on July 7, 2006. The First Amended Complaint also shows that an additional conspirator in  
16          the scheme to deprive Plaintiff and the class of their lawfully due wages, including overtime and  
17          minimum wages under the FLSA, was AC Square's attorneys. Their conduct occurred both as  
18          part of the litigation, but also through conduct outside of litigation. The attorneys' conduct did  
19          not consist solely of defending AC Square and the other defendants against past conduct, (in  
20          which case Plaintiff would not name the attorneys as coconspirators) but also enables, aids, abets  
21          and encourages AC Square and the other defendants to continue to engage in conduct that is  
22          clearly unlawful under both United States and California law. So as to not disrupt the attorney-  
23          client relationship between AC Square et al., and their attorneys, Plaintiff has chosen not to name  
24          the attorneys as defendants at this time.

**CONCLUSION**

Plaintiff respectfully requests that the court take the Motion to Dismiss off calendar.

Dated: August 4, 2008

A handwritten signature in dark ink, appearing to read "Dan Berko", is written over a horizontal line.

DANIEL BERKO  
Attorney for Plaintiff DANNY TRAYNOR-  
KEATING on behalf of themselves  
and all those similarly situated